

BOARD OF FORESTRY AND FIRE PROTECTION

P.O. Box 944246
SACRAMENTO, CA 94244-2460
Website: www.bof.fire.ca.gov
(916) 653-8007



September 15, 2008

Letter Code: BOF

Mr. Harold J. Singer, Executive Officer
Lahontan Regional Water Quality Control Board
2501 Lake Tahoe Boulevard
South Lake Tahoe, CA 96150

RE: PROPOSED ADOPTION OF A MEMORANDUM OF UNDERSTANDING FOR VEGETATION MANAGEMENT ACTIVITIES IN THE LAKE TAHOE REGION BETWEEN THE TAHOE REGIONAL PLANNING AGENCY AND THE LAHONTAN REGIONAL WATER QUALITY CONTROL BOARD.

Dear Mr. Singer,

The Board of Forestry and Fire Protection (Board) offers the following comments to the Lahontan Regional Water Quality Control Board (LRWQCB) regarding the proposed Memorandum of Understanding (MOU) with the Tahoe Regional Planning Agency (TRPA).

As you will recall, in 2005 and 2006, Board and Department of Forestry and Fire Protection (CAL FIRE) staff actively engaged with LRWQCB and TRPA staff to develop an MOU that addressed our respective authorities, and streamlined fuel reduction activities. This effort did not meet with success. Not surprisingly, the California-Nevada Tahoe Basin Fire Commission (Tahoe Commission) Report to the Governors recognized that such an effort was the correct approach and stated:

It is recommended that the Governor of the State of California direct, within the framework of his legal authority, the Lahontan Regional Water Quality Control Board (LRWQCB) to transfer to the TRPA no later than October 1, 2008, by a suitable MOU, all responsibility of the LRWQCB relating to fuel reduction projects performed within the Tahoe Basin. The intent is to have an expedited single permitting process, eliminating the need for the LRWQCB to issue a second permit, and to achieve consistency in the application of environmental laws as relates to these kinds of projects in the Tahoe Basin.” (Emphasis added).

Furthermore:

It is recommended that the Director of CAL FIRE be empowered by the Governor of the state of California to monitor, and report to the Governor the progress on, the development of the MOU between the LRWQCB and the TRPA with regard to reduction of fire hazards. It is further recommended that the final MOU be submitted to, and be subject to the prior review and comment by the director of CAL FIRE. (Emphasis added).

Despite the previous collaborative efforts with the Board and CAL FIRE, the LRWQCB and TRPA did not contact the Board or CAL FIRE to participate in the development and review of this proposed MOU. The lack of consultation seems to indicate disregard for the fact that both the Board and CAL FIRE have very specific and exclusive authorities, and significant history pertaining to forestry and forest practices, vegetation management, and defensible space. Let me be clear then that the cooperation of LRWQCB and TRPA is anticipated and expected by the Board of Forestry and Fire Protection when decisions that have bearing on the Board's authority are being discussed.

1

The Board's specific issues with the proposed MOU are as follows:

Page 2, Preamble Item 10:

The LRWQCB does not possess the authority to define these types of operations on timberlands in California. A direct comparison with the Z'Berg-Nejedly Forest Practice Act of 1973, which includes the definition of *Timber Operations* as defined in Public Resource Code §4527, and the proposed MOU definition of *Vegetation Management Activities* reveals that the proposed MOU employs the exact same wording. The Board together with CAL FIRE has exclusive authority over *Timber Operations*. The LRWQCB and TRPA did not consult with the Board or CAL FIRE prior to utilizing this definition. The definition must be re-written to recognize the Board's and CAL FIRE's jurisdiction for *Timber Operations*.

2

Page 3, Item 2

The Tahoe Regional Planning Agency is presently understaffed to perform its responsibilities under the proposed MOU. This lack of staffing essentially renders the MOU ineffective from the outset and in most instances under the proposed definition of *Vegetation Management Activities*. In essence, this section maintains the current status quo, and risks conflict with the intent of the MOU as described in the Preamble, as well as with Recommendations 17 and 26 of the Tahoe Commission Report.

3

Page 3, Item 3

The MOU notes that applicants may submit Vegetation Management proposals to Water Quality rather than TRPA. We note the following excerpt from the Tahoe Commission's findings:

4

While the LRWQCB has made efforts to facilitate fuel reduction projects in stream environment zones and steep slope areas, substantial disparities remain between the permitting processes followed in California and Nevada, and such disparities have generally increased in recent years as the LRWQCB requirements have made fuel reduction projects in the California portion of the Tahoe Basin more expensive, more time consuming, and less certain. These disparities arise from the application by the LRWQCB of subjective, if not arbitrary, standards to such projects and the LRWQCB's lack of the multidisciplinary capabilities necessary to assess such projects that are presently available within the TRPA. Because of the foregoing, the TRPA is better prepared to exercise this authority. The TRPA is a multidisciplinary agency that is capable of considering all the impacts of such proposed projects and, as a bistate regional authority, the TRPA can apply its authority in regard to such matters uniformly in both States. (Emphasis added).

Page 3, Item 4, 5, 8

These sections render the MOU ineffective in its purported intent to streamline the permitting process, as the LRWQCB has allowed many instances that require insertion of the LRWQCB into the process, contrary to the Tahoe Commission's recommendations.

5

Page 3, Item 7:

This item does not acknowledge CAL FIRE's significant role in timber harvesting review.

6

Page 3, Item 9

The Board together with CAL FIRE has exclusive authority for *Timber Operations* under the Z'berg-Nejedly Forest Practice Act of 1973. The LRWQCB did not confer or consult with the Board or CAL FIRE prior to utilizing this existing definition.

7

This concludes the Board's comments at this time. The Board of Forestry and Fire Protection strongly urges the Lahontan Regional Water Quality Control Board and Tahoe Regional Planning Agency not to adopt the MOU as it is currently proposed. Delaying adoption of the MOU at this time would allow for the necessary consultation with both the Board and Department of Forestry and Fire Protection.

8

The Board of Forestry and Fire Protection looks forward to further communication with the Lahontan Regional Water Quality Control Board and Tahoe Regional Planning Agency toward resolution of the outstanding issues identified in this correspondence. To that end, please feel free to contact me at (916) 653-8007.

Sincerely,



George D. Gentry
Executive Officer